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BOARD OF PHARMACY

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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

STEVEN J. DOLGOFF, R.P., D.P.M.
LICENSE NO. RIO2813900

CONSENT ORDER

TO PRACTICE PHARMACY
IN THE STATE OF NEW JERSEY

This matter initially was opened to the New Jersey State Board of Pharmacy on the Attorney General's filing of an Administrative Complaint on or about October 20, 2004 and an Amended Complaint on May 18, 2005, seeking, inter alia, the suspension or revocation of the license of Steven J. Dolgoff, R.P., D.P.M. to practice pharmacy in the State of New Jersey, pursuant to N.J.S.A. 45:1-21. The Administrative Complaint was based upon allegations that on or about September 18, 2003, respondent was criminally charged in Manalapan Township with two Counts of Possession of a Controlled Dangerous Substance and Possession of a Controlled Dangerous Substance with intent to manufacture,

dispense, or distribute in violation of N.J.S.A. 2C:35-10A and N.J.S.A. 2C:35-5A(1). The Administrative Complaint also alleges that respondent gave a formal taped statement to law enforcement officers admitting that in 2003 he ordered Vicodin from Southern Pharmaceutical Anesthesia Supplies using the Drug Enforcement Administration certificate for his podiatry practice and that he had the drugs sent to his post office box. Respondent's license to practice podiatry in the State of New Jersey had expired on October 31, 2001, and by operation of N.J.S.A. 45:1-7.1, respondent's podiatry license was automatically suspended on October 31, 2001.

The Complaint further alleges respondent admitted to law enforcement officers that he had been ordering Vicodin for his own use every month for five years, that he ingested sixty to seventy tablets daily, and that he ordered between four and five bottles each month, containing five hundred pills each. Additionally, the Amended Complaint alleges that Dr. Dolgoff pled guilty on or about August 23, 2004 to one Count of Possession of a Controlled Dangerous Substance. During the plea colloquy, respondent admitted that on September 18, 2003, he went to a post office box, received a box containing 2500 Vicodin pills, that he did not have a doctor's prescription for the pills, and that he knew it was against the law to possess the pills without a valid prescription.

Following plea negotiations, as indicates earlier, respondent pled guilty on August 23, 2004, to one Count of

Possession of a Controlled Dangerous Substance. As part of the plea agreement, the respondent applied for and was accepted by the Monmouth County Probation Department into the Pre-trial Intervention program. This program permits persons without a prior criminal record to request an expungement of the terms of the plea following successful completion of conditions of probation. In this instance, Dr. Dolgoff was ordered to complete 75 hours of community service, drug treatment and counseling, random drug testing and to pay penalties in the amount of \$1,200. All of these conditions have been completed.

The Attorney General subsequently filed a Motion for Leave to File an Amended Complaint and a Motion for Summary Decision on or about May 18, 2005, which motions were heard before the Board on July 13, 2005. Respondent was represented by Michael J. Keating, Esquire; Tara Adams Ragone, Deputy Attorney General represented the State. Respondent did not contest the filing of the Amended Complaint; thus, the Board granted the Attorney General's motion to amend the Complaint.

In response to the Motion for Summary Decision, respondent did not contest any material fact set forth in the moving papers but argued orally that the conduct did not evidence fraud, professional misconduct, acts constituting a crime relating adversely to the practice of pharmacy, or that respondent lacked good moral character.

After deliberating in Executive Session, the Board moved into Public Session to vote on the motion. The Board granted the Motion for Summary Decision pursuant to N.J.A.C. 1:1-12.5 since there was no genuine issue as to any material fact. The Board found respondent engaged in acts of deception, dishonesty, and misrepresentation, in violation of N.J.S.A. 45: 1-21(b), in acts constituting professional misconduct and a crime relating adversely to the practice of pharmacy, in violation of N.J.S.A. 45:1-21(e) and (f), and that at the time of the conduct, respondent lacked good moral character, a continuing requirement for licensure pursuant to N.J.S.A. 45:14-50(C).

The Board then directed the parties to proceed to a hearing on mitigating circumstances to determine an appropriate penalty. Testifying on behalf of respondent, David Singer, L.P.C., L.R.C., a licensed counselor specializing in substance abuse and addition matters, related to the Board his counseling of respondent, respondent's dedication and commitment to his treatment, and respondent's ultimate success with the help of suboxone and naltrexone in dealing with any residual craving for an opiod. Mr. Singer testified that the respondent has been taught and successfully uses other non-medical modalities to deal with the chronic back pain that allegedly caused the substance abuse. Finally, Mr. Singer opined that the respondent could work in a pharmacy environment without risk of relapse so long as he had in

place a support system which included ongoing therapy and urine sample monitoring.

Dr. Dolgoff testified on his own behalf and responded to questions from the Board members. He testified and confirmed that he had satisfactorily completed all the terms and conditions set forth by the Monmouth County Probation Department for successful completion of the Pretrial Intervention Program. Dr. Dolgoff conceded and acknowledged that his conduct was unlawful.

Respondent requested that the Board consider in mitigation that the medications involved, which led to his substance abuse, were initially prescribed by a physician in order to treat severe back pain. He requested that the Board permit him to maintain his active pharmacy license under any conditions the Board deemed necessary and appropriate.

Having deliberated in Executive Session regarding the penalty phase of the proceeding, the Board reconvened in Open session and with the consent of the parties moved to enter into a Consent Agreement with respondent that would serve not only to protect the public health, safety, and welfare, but also serve to ensure respondent's continued commitment to, and his participation in, his treatment program.

IT IS, therefore, on this 14th day of December 2005

ORDERED AND AGREED THAT:

1. Respondent, Steven J. Dolgoff, R.P., D.P.M., hereby is suspended from the practice of pharmacy in the State of New Jersey for a period of three (3) years, all of which shall be stayed and served as a period of probation on the condition that respondent complies with paragraphs 2 through 8 herein. If respondent violates any of the provisions of paragraphs 2 through 8 herein, in addition to the action provided in paragraph 11 below, the Board may initiate proceedings, with notice to the respondent, to further suspend or revoke his license to practice pharmacy.

2. (a) Steven J. Dolgoff shall submit to directly witnessed random urine monitoring a minimum of two (2) times per week at a laboratory facility approved by the Board for the initial three (3) months of the period of probation, a minimum of one time per week for the second three months of the period of probation, and thereafter a minimum of one time per month until the completion of the probationary period. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen of each sample shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b) All test results including any secondary test results shall be provided directly to Joanne Boyer, Executive Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Joanne Boyer or her designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, respondent must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a

reasonable person would not withhold consent to waive the test on that day.

(d) In the event respondent will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period after consulting with the Professional Assistance Program of New Jersey ("PAPNJ").

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall create a rebuttable presumption of a confirmed positive urine test. Such specimen immediately shall be subjected to the confirming GC/MS test.

(f) Respondent shall familiarize himself with all foods, food additives, or other products (such as poppy seeds) that may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

3. (a) Respondent shall have monthly face-to-face counseling contact with a counselor pre-approved by the Board for the duration of the probation. Respondent shall ensure said Board-approved counselor provides reports to the Board quarterly as to

progress and immediately within 24 hours of learning as to any evidence of relapse. Any change in therapy or discontinuance must be pre-approved by the Board.

(b) Respondent shall have treatment with Dr. Franco (or any successor psychiatrist pre-approved by the Board) once every three months for the duration of the probation. Respondent shall ensure that Dr. Franco (or any successor psychiatrist pre-approved by the Board) provides quarterly reports regarding his progress in treatment and immediate (within 24 hours) reports orally and in writing of any indication of a relapse or recurrence of drug or alcohol abuse directly to the Board. Any change in therapy or discontinuance must be pre-approved by the Board.

4. Respondent shall attend support groups, including NA, AA, or 12 step meetings not less than one (1) time per week. Respondent shall provide evidence of attendance at such groups directly to the Board on a monthly basis. If respondent discontinues attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

5. Respondent shall abstain from the use of alcohol and Controlled Dangerous Substances and shall not possess any Controlled Dangerous Substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, respondent shall

advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent shall cause any physician or dentist who prescribes medication for him which is a Controlled Dangerous Substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

6. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment or other program as outlined in this order, including but not limited to his Board-approved counselor, Dr. Franco, and the PAPNJ, as may be required in order that all reports, records, and other pertinent information may be provided to, and utilized by, the Board in a timely manner.

7. Should respondent return to the practice of pharmacy and/or have access in the workplace to Controlled Dangerous Substances, respondent shall give written notice to the Board, and provide a written copy of this Order to each employer, prior to beginning and/or changing his employment. Further, he shall ensure that each employer provides documentation to the Board of having received the Order.

8. Respondent shall not be a preceptor or a pharmacist-in-charge and shall be barred from being a permit holder either directly or indirectly through connection with any person related by blood or marriage for a three-year period from the entry of this Order.

9. Respondent shall pay the costs of the proceedings in the amount of \$8,614.50 and transcript costs of \$477.25. Respondent may request a payment schedule which shall include interest at the rate set by Court rule, subject to the approval of the Executive Director of the Board. At any time following the entry of this Order, the Board may file a Certificate of Debt memorializing the entire amount then due and owing from respondent.

10. It is hereby agreed among the parties that respondent shall be responsible for any and all costs associated with the conditions of his probation as outlined herein including, but not necessarily limited to, all costs associated with the urine monitoring, counseling, and reporting required by the terms of this Order.

11. (a) Respondent shall be subject to an order of automatic suspension of his license for the entirety of the stayed period of suspension upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this Consent Order, including but not

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limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

NEW JERSEY STATE BOARD OF PHARMACY

By: Pamela Allen, RPh
Pamela Allen, R.P.,
President

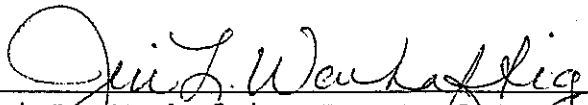
I have read the within Order and understand its terms. I consent to the entry of this Order by the New Jersey Board of Pharmacy.

Steven J. Dolgoff
Steven J. Dolgoff, R.P., D.P.M.

~~Consent as to form and entry.~~

Michael J. Keating
Michael J. Keating, Esquire
Attorney for Steven J. Dolgoff, R.P., D.P.M.

Consent as to form and entry.



Jeri L. Warhaftig, Deputy Attorney General
on behalf of the Attorney General